

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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3 JENNIFER D. ARAOZ, 22-CV-00125(AMD)

4 Plaintiff,

5 -against- United States Courthouse
6 Brooklyn, New York7 THE NEW ALBANY COMPANY, September 7, 2022
8 LLC, et al., 10:30 a.m.

9 Defendants.

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11 TRANSCRIPT OF CIVIL CAUSE FOR PRE-MOTION CONFERENCE
12 BEFORE THE HONORABLE ANN M. DONNELLY
13 UNITED STATES DISTRICT JUDGE

14 A P P E A R A N C E S:

15 For the Plaintiff: HANTMAN & ASSOCIATES
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30 produced by Computer-aided Transcription.

1 (In open court.)

2 THE COURTROOM DEPUTY: All rise. This is civil
3 cause for a pre-motion conference, Docket Number 22-CV-125,
4 Araoz versus The New Albany Company, LLC, et al.

5 Counsel, state your appearance. Plaintiff first.

6 MR. HANTMAN: Good morning, Your Honor.

7 Robert Hantman from Hantman Associates. I'm with
8 Mr. Casey, who is an associate of the firm.

9 I thank you for allowing me to come here dressed up.
10 It's somewhat unique to be in the court in person.

11 Thank you, Your Honor.

12 THE COURT: My pleasure. Good morning.

13 MR. LITTLE: May it please the Court.

14 Marion Little on behalf of defendants, Your Honor.

15 THE COURT: Good morning.

16 So, as I said when I came in, I picked up the wrong
17 binder, but I remember the case pretty well.

18 So this is a pre-motion conference on an anticipated
19 motion to dismiss pursuant to 12(b)(2) and 12(b)(6) of the
20 federal rules.

21 So the first thing is there's the motion to
22 disqualify counsel, which Judge Levy is going to handle, and I
23 think we probably should postpone setting a motion schedule
24 until after Judge Levy decides that motion.

25 I don't know if it's up on ECF, but I've spoken with

1 him, so I don't know if anybody has anything that you want to
2 say about that particular motion except I don't think it will
3 take that long for him to decide. Anything that you wanted to
4 say, Mr. Little?

5 Let me tell you one other thing. It's fine to stay
6 seated if you want. I can actually hear you better with the
7 microphone, so if it's not too difficult for you to stay
8 seated, it actually makes it easier.

9 But go ahead.

10 MR. LITTLE: It's old habits, Your Honor.

11 THE COURT: I know.

12 MR. LITTLE: We have -- we stipulated to an
13 extension of time for the plaintiff's counsel to file an
14 opposition to that motion as of yesterday, because otherwise
15 the memo contra would have been due yesterday, Your Honor.

16 THE COURT: Okay. So anything else that you wanted
17 to say about that?

18 MR. HANTMAN: No, Your Honor. We wrote a letter in
19 response to Mr. Little's letter, and I think that almost
20 covers everything.

21 THE COURT: Okay.

22 MR. HANTMAN: I'm sure -- Judge Levy is very
23 familiar with this case.

24 THE COURT: Yes, I know.

25 MR. HANTMAN: He's been working with us for a long

1 time, and we were actually hoping -- you know, we're really
2 hoping that he would just take control of the case --

3 THE COURT: You can --

4 MR. HANTMAN: -- and not bother you.

5 THE COURT: What did you say? To not --

6 MR. HANTMAN: To not bother you.

7 THE COURT: That's why I took the job.

8 So, anyway, you can certainly consent to his
9 jurisdiction. He knows the case very well, and he's extremely
10 smart so that's something you can certainly think about.

11 I think since we don't waste your time, did you fly
12 in from Ohio?

13 MR. LITTLE: I did, Your Honor.

14 THE COURT: So we might as well get something done
15 here, don't you think?

16 MR. LITTLE: That would be fine, Your Honor.

17 THE COURT: Well, let me just ask a couple of
18 questions, first of all, just about the complaint.

19 You know, you have a couple of claims in there that
20 I'm not sure would survive a statute of limitations claim.
21 You've got a fraudulent conveyance. I don't think that the
22 New York statute extended the statute of limitations on
23 fraudulent conveyances. I might be wrong about that, but I
24 don't think -- I haven't thought about it that much, but I
25 don't think that that extension, you know, for a particular

1 category of claims applies to every claim that you want to put
2 in a complaint.

3 Is that your understanding, or -- I don't know what
4 the answer is?

5 MR. LITTLE: Well, the proposition the Court just
6 articulated is that the legislation did not revive all
7 possible claims as true, Your Honor. I know that there's at
8 least one claim in the complaint we have identified as not
9 surviving the statute of limitations.

10 THE COURT: Was that the fraudulent conveyance?

11 MR. LITTLE: I know we had another defense on that
12 that was probably even easier --

13 THE COURT: Okay.

14 MR. LITTLE: -- and so the Court wouldn't have to
15 jump through the mental gymnastics on the statute of
16 limitations analysis because there's simply not an allegation
17 that anyone was rendered insolvent by the transfer of the
18 asset.

19 THE COURT: All right.

20 And then there's also a -- there's kind of a
21 freestanding conspiracy claim. I don't know what that is. Is
22 that a -- I'm not sure that it would survive a motion to
23 dismiss.

24 MR. HANTMAN: Your Honor, if I may for a moment.

25 This started with a summons with notice filed

1 pro se --

2 THE COURT: Right.

3 MR. HANTMAN: -- by the young lady. There was an
4 answer actually filed, even though an answer might not have
5 been normally -- be customary with state court, it actually
6 was filed January 14th --

7 THE COURT: Okay.

8 MR. HANTMAN: -- exactly at that point, motions
9 could have been made -- any number of motions could have been
10 made to get the case dismissed.

11 Subsequently, we were actually retained just
12 hopefully to try to resolve this thing and we focused,
13 primarily, on the fraudulent transfer.

14 THE COURT: Right.

15 MR. HANTMAN: Everything else -- we didn't invent
16 anything, we just took the verified complaint of the client
17 and we filed the papers.

18 The present motion -- or the request to file the
19 motion to dismiss really wasn't focused on the different
20 statute of limitations. It was really limited to just a --
21 mostly the jurisdiction and claiming that our complaint was
22 conclusory, in general, when, in fact -- I think it speaks for
23 itself -- it's verified, and it's anything but conclusory.

24 Now, as far as --

25 THE COURT: Well, we can talk about that in a

1 minute, but --

2 MR. HANTMAN: As far as the statute of limitations
3 on some of those matters, other than the -- the original case
4 was under the Child's Victims Act, which is --

5 THE COURT: Right.

6 MR. HANTMAN: -- 22 NYC 202.72, which did extend the
7 statute of limitations for that.

8 As far as whether other causes of action -- which
9 are somewhat derivative or flow from that -- stand or not
10 stand, we've not briefed at the present time.

11 THE COURT: Nobody has briefed anything at the time,
12 that's why we're having the conference.

13 I'm a fairly practical person and I like to keep
14 things as efficient as possible, and I don't think that it's
15 probably efficient to have claims in a complaint that wouldn't
16 withstand the talent. I haven't decided anything. I'm just
17 throwing it out there for you to think about.

18 MR. HANTMAN: Well, here's what I'm willing to do --

19 THE COURT: Well, you can tell me what you're
20 willing to do -- I'm not ordering you to do anything right
21 now. I'm alerting you to certain issues that I see when I
22 look at the complaint. There are some other issues when I
23 look at the complaint as well. There's a lot of group
24 pleading and I'm just putting aside the jurisdictional
25 questions. There's -- you know, there's not a lot of notice

1 as to which defendant is alleged to have done what.

2 There are -- I mean, there's a lot of things about
3 what a lot of other people did who are not parties, but
4 there's, at least from my reading of it, you know, not a lot
5 of clarity about what the individual defendant did versus what
6 the organizational defendants did. One of them is not in
7 existence anymore. I don't know if you can sue -- I can't
8 remember which one it is -- but it doesn't exist anymore. I
9 don't know if you can bring a lawsuit against an entity that
10 doesn't exist. These are just things I noticed about the
11 complaint.

12 But I would like to hear on this question of
13 jurisdiction. I know the plaintiff says there's long-arm
14 jurisdiction, but I'm not really -- I don't understand what
15 the argument is that gives New York jurisdiction. Is it
16 business transactions? Is it just the ownership of the
17 building in Manhattan? And if it's the business, you have to
18 show that there's been a transaction of business in New York
19 that's related -- that the claims arise out of the business
20 activity.

21 So I'm not a hundred percent sure that you can make
22 that case with every defendant in the complaint. So -- and to
23 what extent have you talked about doing jurisdictional
24 discovery?

25 MR. LITTLE: Your Honor, may I interrupt for a

1 moment?

2 THE COURT: Of course.

3 MR. LITTLE: The Court talked about practicalities,
4 and there's some information that has come to our attention
5 since we submitted the letter to the Court.

6 THE COURT: Okay.

7 MR. LITTLE: If I may approach.

8 THE COURT: Sure.

9 Does Counsel have whatever this is?

10 MR. LITTLE: Yes, Your Honor.

11 THE COURT: Is it two copies or one?

12 MR. LITTLE: One copy for your staff attorney and
13 one copy for you, Your Honor.

14 THE COURT: That's a great idea.

15 MR. LITTLE: I clerked for a few years for the
16 federal judge and so I know how to handle it most days.

17 Your Honor, in reviewing the complaint in
18 anticipation of this conference, like you, I noticed that
19 there were so many other allegations referring to other
20 parties' conduct, and I also noticed that because of some
21 redundancy, it looked like there was some cutting and pasting.
22 So we decided to do a little bit more investigation.

23 And what we learned, if you look at page -- or Tab
24 2, is that the plaintiff in this case had actually filed in
25 August of 2019 a lawsuit against the Epstein estate, Maxwell,

1 and Jane Doe.

2 THE COURT: Okay.

3 MR. LITTLE: And then on October 10, 2019, there had
4 been an amended complaint filed in this New York state action,
5 and I have copies of this materials in the package, Your
6 Honor, I don't have certified copies just because we didn't
7 have time to secure them on such a rapid basis, but in that
8 amended complaint, they sued Epstein's estate, Maxwell, Nine
9 East 71st Street Corporation, which is the entity that owned
10 the subject property, and then NES, LLC, which was the entity
11 that Jeffrey Epstein used to acquire the property at a later
12 date.

13 And then there's others, and I will notice that -- I
14 will make that note for the Court in just a second.

15 But some year plus after the filing of that lawsuit,
16 there's a stipulation discontinuation with prejudice, and if
17 the Court reviews that complaint, you will see that it is
18 almost verbatim to most of the allegations found in the
19 instant complaint. So we've put at Tab 3 a copy of that first
20 amended complaint filed by the plaintiff. As I referenced
21 earlier, it includes claims against the Epstein estate,
22 Maxwell, also Lesley Groff, who is referenced in our papers,
23 the Nine East 71st Street, and then there's also another lady
24 who was the maid that's referenced in it.

25 So the allegations are the same. It all relates to

1 the supposed or alleged misconduct that occurred at the home
2 that is the basis for the lawsuit.

3 And when you look at Tab 6, Your Honor, of our
4 materials, these are excerpts from the complaint before Your
5 Honor, and throughout that complaint, the plaintiff is
6 alleging that the defendants in this case served as the
7 employer for the defendants that were in the original lawsuit,
8 and that's referenced over and over.

9 I've simply put two pages of those allegations, but,
10 quite frankly, there are more that could be mined from the
11 current complaint.

12 The reason I emphasize that, Your Honor, is that
13 when you look at Tab 7, we're going to have a res judicata
14 event here. We have a voluntarily dismissal of prejudice,
15 which constitutes an adjudication on the merits. They are the
16 same allegations, and there are -- there is privity as it
17 relates to the parties.

18 So any time there is an employer or employee
19 relationship alleged that establishes privity for res
20 judicata -- and I wish I had learned of this before we
21 submitted the letter to the Court, but, obviously, as part of
22 the submission we'll make for dismissal on the merits, Your
23 Honor, we'll want to include the res judicata arguments based
24 on the discovery of this complaint and its dismissal with
25 prejudice.

1 I believe, and I agree with the Court there is many
2 other claims that don't satisfy 12(b)(6) because either the
3 claim fails on the merits or it just doesn't plausibly state a
4 claim. But probably the simplest exit strategy on the merits
5 at this point is res judicata.

6 Now as it relates to the jurisdictional issues, Your
7 Honor, if you look behind Tab 1 -- now, I just have a
8 compilation in there of materials because we sort of changed
9 in our preparation after we discovered the complaint, but we
10 have five separate defendants, only four of which are
11 currently in existence because the YLK Charitable Fund has
12 been dissolved, but The New Albany Company is a real estate
13 company in New Albany, Ohio, and that's its principle place of
14 business. It doesn't conduct business anywhere else. If you
15 wanted to buy a real estate in New Albany, Ohio, there would
16 be an opportunity to do so through that company, but,
17 otherwise, no.

18 The Wexner Foundation, of course, has its principle
19 place of business in Ohio. It does make charitable
20 contributions throughout the world, but its business is --
21 none of the claims here arise out of any of its conduct --

22 THE COURT: Just slow down a little bit.

23 MR. LITTLE: -- arise out of any of its conduct.

24 And then, of course, then, the Wexners -- Abigail
25 Wexner and Les Wexner -- are Ohio citizens. They did --

1 Mr. Wexner did have an interest in the nonparty here Nine East
2 71st Street Corporation many years ago, and the Court asked
3 whether there had been any type of jurisdictional discovery.
4 Well, of course seeing our motion to disqualify which relates
5 to the breach of the confidentiality agreement, but behind Tab
6 9 is the outline from a timeline standpoint of the information
7 that's been provided to plaintiff's counsel showing the fact
8 that Mr. Wexner had no ownership in the subject property at
9 the time of the alleged misconduct. He was -- had all
10 disassociation from the property in 1998. He had actually
11 started his disassociation of the property earlier than that
12 because in -- after acquiring it in 1989, he later leased it
13 to Jeffrey Epstein in 1994.

14 We've produced to Counsel the documents, Your Honor,
15 showing the changing in utility expenses, pest control costs,
16 the taxes for the property. We've even given them the moving
17 invoices showing the removal of the Wexner's art from the
18 property. And if we were really good at misconduct, I guess
19 we convinced *The New York Times* to also publish an article in
20 January of '96 talking about the fact that Mr. Wexner wasn't
21 living there anymore and had hardly lived there at all since
22 the acquisition of the property.

23 We've also given excerpts of tax returns that show
24 the vesture of Mr. Wexner from that property as well.

25 So in terms of -- it would have been by preference

1 that all was kept confidential pursuant to the agreement
2 struck with Counsel, but now that that agreement has been
3 breached I'm happy to disclose to the Court that we have made
4 available this information on a -- without the formality of
5 discovery, to establish Mr. Wexner's lack of possession or
6 control of the subject property at the time of the alleged
7 misconduct. So that part has occurred.

8 So I think I finally answered the Court's question
9 from ten minutes ago in a sort of a roundabout way.

10 THE COURT: No, that's fine.

11 Do you have any response to this?

12 MR. HANTMAN: Yes, Your Honor.

13 As far as what's -- having more specifics in the
14 complaint and knowing exactly who did what to whom, I think
15 it's undisputed that the claim arises out of something that
16 happened to a young lady when she was like 15 years old,
17 that's a long time ago. Clearly, as lawyers, we can only go
18 on what she knows or what she thinks happened.

19 THE COURT: But what does that have to do with these
20 defendants. I mean, that's the issue. I mean, a lot of
21 these -- this situation is obviously the subject of a long
22 criminal trial in the Southern District. I think the issue is
23 it's -- even reading the complaint, it sounds like you should
24 have a good claim against some of the people that were
25 directly involved. The difficulty that I think -- I haven't

1 read motions yet, but even putting aside all of the questions
2 about whether the dismissal of the other case with prejudice
3 means that you have a res judicata issue -- you might -- it's
4 a pretty good argument -- but aside from that, the complaint
5 just kind of randomly at times throws in that the defendants,
6 as a group, employed people and there are other references
7 to -- that claims that are made on information and belief and
8 just -- I mean, I read a lot of complaints. You can't use
9 discovery to try to -- try to build a case and so I'm just
10 alerting you to what I think some of the defects are. You
11 have -- you know, group pleading is a problem here because
12 it's hard to tell who you're claiming did what.

13 And as I said -- even if he owned the building at
14 the time all this was happening, I think it would be tough to
15 make a case for liability unless you can show the -- that he
16 knew what was going on and that he did something to contribute
17 to it. But I think just the problems with the complaint are,
18 it's just not very specific, and I think that the rules
19 require that.

20 MR. HANTMAN: Well, Your Honor, as to whether he
21 knew or didn't know what was going on, I think it's a given
22 that there's public information --

23 THE COURT: Public information, yes, it could be
24 right, it could be wrong.

25 MR. HANTMAN: But there's testimony from Ms. Maxwell

1 that we mentioned in our letter, in her deposition, she
2 certainly mentions enough that should get us by a motion to
3 dismiss.

4 THE COURT: But that relates to these defendants?
5 Does she say that these defendants did all the things that you
6 claim they did.

7 MR. HANTMAN: I don't think that she was even asked
8 specifically who was working at the premises at that time.
9 Our client certainly doesn't even know if the names of the
10 people when she's 15 -- and these illegal things are happening
11 to her. She wasn't asking Mr. Epstein, Who are these people?
12 What are their names? You know, who do they work for?

13 THE COURT: Well, I'm not suggesting that that's a
14 requirement, but when you file a complaint with any kind of an
15 allegation, it has to be legally sufficient.

16 I feel like we're getting ahead of ourselves a
17 little, because I don't really understand what -- and maybe
18 this is just a failure of imagination on my part, but I don't
19 really understand your claims about jurisdiction over these
20 various parties. You've got -- and now I'm just -- just for
21 ease of reference -- you've got The New Albany Company.
22 What's the jurisdiction over The New Albany Company in
23 New York. What's the basis of long arm jurisdiction?

24 MR. HANTMAN: Well, Your Honor, first of all, at a
25 minimal we feel there's negligence and negligence supervision

1 as to what was going on as to the building. So who owns the
2 building at the time is important, number one --

3 THE COURT: What connection did The New Albany
4 Company have to New York?

5 MR. HANTMAN: Well, at this point -- Mr. Little has
6 done a good job in trying to bring things up now, frankly, for
7 the first time in front of Judge Levy --

8 THE COURT: But I'm the district judge. I asked for
9 it. I want it.

10 MR. HANTMAN: No, I understand. But I'm just
11 saying, prior to this, the main issue was the ownership of the
12 property.

13 THE COURT: Okay.

14 MR. HANTMAN: And that was the only thing which we
15 were addressing. Now we're at a different stage and we'll
16 address what's a legitimate concern to, Your Honor.

17 THE COURT: But you've got five Ohio-based
18 defendants. And there has to be a basis for the exercise of
19 personal jurisdiction over those defendants and I just want to
20 understand what it is. If we don't have it, then I don't have
21 jurisdiction over the case.

22 MR. HANTMAN: Well, I think that question rises and
23 falls on whether Wexner or these other entities, okay,
24 basically either own the property at the time of this -- of
25 these incidents which happened or were involved, and this is

1 -- this would be more or less summary judgment, not a motion
2 to dismiss, and/or they conspired among themselves to have a
3 fraudulent transfer when, in fact, there was really not a
4 transfer to Mr. Epstein. They say they gave it to him, but
5 there's no proof that they ever got paid for it. They say
6 they gave him the property, but we have building permits which
7 have Wexner's name on it and there's a lot of things which are
8 subject to question which, frankly, we were hoping not to even
9 be at this stage. We were hoping -- and I'm not an expert on
10 the real estate -- on title work, okay, but we brought in an
11 expert to look at the -- you know, look at what this public
12 record, essentially, and try to make a determination -- to
13 answer your question -- as to who owned this property and if
14 anyone -- if they didn't own the property, who was involved in
15 trying to falsify the records to save Mr. Wexner and those
16 companies potential liability.

17 THE COURT: But when is this supposed to have
18 happened? In the '90s?

19 MR. HANTMAN: Well, it happened a long time ago,
20 yes.

21 THE COURT: But what's the motive in the '90s?

22 MR. HANTMAN: Well, no, it would be -- it would have
23 to have been at the time that this incident happened, and the
24 incident happened when --

25 THE COURT: In '98, no?

1 MR. HANTMAN: Yeah, it happened a long time ago.

2 THE COURT: Right.

3 MR. HANTMAN: And we believe that at the time that
4 this happened, and even afterwards, these parties were
5 intwined with each other and participating in a scheme to make
6 it look as if Wexner and these companies had no ownership of
7 the property; that it was just Epstein who owned the property.
8 That's where the case really rises and falls.

9 THE COURT: But you have to have some evidence of
10 that that's not just you wonder if it's happened.

11 MR. HANTMAN: No, a hundred percent we need evidence
12 of this, and that's why even Judge Levy recognized that he
13 thought it was a good use of time for us to exchange
14 information with Mr. Little to get to this bottom line.

15 And actually --

16 THE COURT: And there was a confidentiality
17 agreement, and I'm not sure how all that stuff wound up in the
18 complaint, that's not for me to decide today --

19 MR. HANTMAN: Well, nothing was attached to the
20 complaint. It was just reference to certain things that were,
21 like, either public information, or, just to be specific,
22 there's nothing attached to it, okay, number one.

23 But, number two, there was only five different
24 documents which we felt was needed to make the determination
25 as to whether any of these people should be involved or not

1 involved.

2 THE COURT: Did you get them?

3 MR. HANTMAN: Well, no, we didn't get them and
4 that's exactly why it ended up -- we were pleading with Judge
5 Levy. I said, Your Honor -- and this is quote/unquote --
6 Judge, listen, we're perfectly fine without having litigation.
7 Our client, the last thing she wants is to be in trial of this
8 type of matter --

9 THE COURT: She what?

10 MR. HANTMAN: To be in trial. Our client.

11 THE COURT: She wants a trial?

12 MR. HANTMAN: No, she doesn't.

13 THE COURT: I see.

14 MR. HANTMAN: The last thing she wants is a trial.
15 She wants to get resolution.

16 I suggested to Judge Levy: Listen, why don't you
17 appoint an independent expert in title, okay, and we will send
18 them what we have, let Mr. Little send them what he has and
19 let him give a report and recommendation as to whether the
20 property was owned by these various corporations or
21 Mr. Wexner's companies at or about the time that these
22 incidents happened. That's what I suggested.

23 THE COURT: What did Judge Levy say?

24 MR. HANTMAN: Well, he thought it was a good idea,
25 frankly. And Mr. Little said, No, our client doesn't want to

1 wait any longer. He wants you to file a complaint. So we
2 file a complaint.

3 But I don't disagree with what you're saying, but
4 again, Judge Levy felt constrained to order something at that
5 time --

6 THE COURT: He felt constrained?

7 MR. HANTMAN: Well, he didn't want to, I guess. He
8 said, Well look, I can't do anything about this. File your
9 complaint. He said, File your complaint, so we filed the
10 complaint.

11 Now that we're here, I, again, urge or request that
12 the Court initially may appoint an independent expert to look
13 at this title thing because that will answer some of the
14 questions. Maybe there is no case, but we believe there
15 should be at least some discovery, but we would rather have
16 discovery, you know, which is limited and focused and
17 economically done and expeditiously done than having all of
18 these different issues.

19 I mean, we're not trying to be unreasonable, and
20 we're certainly not trying to make up allegations to satisfy a
21 motion to dismiss. We have a verified complaint, which,
22 frankly, is as much as this young lady knows at the present
23 time, and I believe that, if Mr. Little is correct, at some
24 point, the proper remedy would be a motion for summary
25 judgment. But as far as jurisdiction, it should be at least

1 limited jurisdiction, discovery, and/or let's go back to step
2 number one and let's look at who owned the building and
3 whether these defendants were involved or not involved. That
4 doesn't satisfy the allegations that people who worked for
5 these corporate defendants or for Mr. Wexner's company,
6 whether they really worked for him or these companies, and
7 whether they should -- they would be responsible, but even if
8 we can't find who they are, there would be negligent
9 supervision. The owner of the property, or whoever hired
10 these people, would be responsible for whatever they did or
11 didn't do.

12 THE COURT: I don't know what employees you are
13 talking about. It sounds like they are Mr. Epstein's
14 employees. No?

15 MR. HANTMAN: Well, listen, Your Honor --

16 THE COURT: I don't know what the answer is.

17 MR. HANTMAN: You know more than me.

18 THE COURT: I don't.

19 MR. HANTMAN: We don't know that they are
20 Mr. Epstein's employees. We believe that there's allegations
21 that they were employees of a certain corporate defendants --

22 THE COURT: Of the New Albany company?

23 MR. HANTMAN: Yes, yeah.

24 THE COURT: Okay. Again, I think we've lost the
25 thread here a little bit, but I think the issues that you have

1 to answer -- and it's the case in every litigation, if I don't
2 have jurisdiction over these five Ohio-based defendants who
3 don't appear to have any connection to New York -- and perhaps
4 I've missed it -- but then I don't -- I can't -- I'm not
5 permitted to exercise jurisdiction over the case regardless of
6 what the other potential flaws in the case are.

7 Let me give Mr. Little a chance to respond. Just do
8 it slowly, if you could.

9 MR. LITTLE: Yes, Your Honor. I think there's been
10 a conflation of a couple different distinct concepts here, so
11 let me, if I can, clarify those.

12 When this case was first filed, we communicated to
13 that Counsel Mr. Wexner did not have any ownership interest in
14 the property and the alleged -- at the alleged time, which is
15 three years after the transfer of the home, and we even
16 proposed to Counsel, we'll even show you the documents that
17 are available from 20 years ago, whatever we can find to
18 document this. And I think finding moving invoices was pretty
19 good work on our part to find something that basic and we did,
20 but we did that pursuant to the confidentiality agreement.

21 Now, several issues arose from that: One, despite
22 the confidentiality agreement, there was continued disclosures
23 to the magistrate judge in an effort by Counsel to enlist the
24 magistrate judge to, basically, do counsel's job in terms of
25 stating what the claim is, and we rejected that. At the same

1 time, we did make the materials available, we made them
2 available on a couple of different occasions, but what we
3 found out is that over the two-month period that we were going
4 through this process, there were continued demands for
5 information we don't have in our possession, we don't control,
6 so we would hear a question, well there was a building permit
7 later that had Mr. Wexner's name on it. Well, as you might
8 know, an owner of a property doesn't pull the building permit.
9 That's the contractor.

10 And there had been a building permit pulled years
11 ago in Mr. Wexner's name when he was doing renovations on the
12 property. The fact that some contractor later put his name on
13 it, that's not something I can control. He can go interview
14 the building contractor he wants. Or if they want to
15 interview someone, they can interview the notary who notarized
16 the paper showing the transfer of the interest. That's
17 something they can do.

18 But in terms of the other pieces of information they
19 claim they don't have the benefit of, that makes two of us.
20 We don't have the benefit of that information either. I can't
21 provide them what we don't have, but this -- continued to just
22 be prolonged, and in a case that was filed last August, I
23 think the phrase goes, "All good things must come to an end,"
24 they needed to finally file their complaint, which they were
25 obligated to do in January, or dismiss the action and we gave

1 them that option. Just dismiss it. That's your choice. Or
2 file your complaint. And then when they filed the complaint,
3 we, of course, identified for them the host of the issues.

4 Now, Counsel suggested to you that jurisdictional
5 issues were not paramount at the inception of this case. That
6 is untrue. Of course all they gave us is initial notice, so
7 the perfunctory answer to that notice says there's no
8 jurisdiction as to these defendants, but there's nothing to
9 move against since there's no complaint. But in each of the
10 status reports submitted to the magistrate, there's a
11 reference to the fact that there's a lack of jurisdiction over
12 these defendants, that was paramount. At the same time, at a
13 concurrent time frame, we're simply trying to provide someone
14 some documents pursuant to a confidentiality agreement so they
15 can satisfy their obligations to Counsel to say, Tell the
16 client there's no basis for bringing this action, let's just
17 move on.

18 They decided that no matter what we give them, they
19 are going to continue with the action. That's fine. It's
20 time to litigate it. It's time for them to put up the facts
21 that support their contention.

22 And when you read the complaint from the original
23 New York action that was filed years ago, you will see that
24 there's very specific specificity by this plaintiff as to
25 whose employees they used to work. They were Jeffrey

1 Epstein's employees. They were Jeffrey Epstein's maid,
2 Jeffrey Epstein's secretary, and, in fact, there's specific
3 allegations in the New York complaint that Jeffrey Epstein
4 controlled that property.

5 Now, we have a new complaint that says now
6 Les Wexner and these defendants controlled blah-blah-blah --
7 there's an assortment of adjectives used there as to -- or
8 verbs as to what we supposedly did or did not do. But the
9 simple truth is, one of these are factually incorrect. But
10 more fundamentally, they have not satisfied that initial
11 preliminary obligation they must discharge to establish the
12 Court's jurisdiction here in New York, and that's why we've
13 raised these issues. For simplicity purposes, Your Honor, we
14 raised them both 12(b)(2) and 12(b)(6), because if we were
15 going to file a motion, we would probably do it all in one
16 time to minimize the number of times the Court had to look at
17 this file in its early inception, but we think there are
18 legitimate criticisms, concerns, regarding the allegations
19 advanced in this case both from a jurisdictional and
20 substantive standpoint, and that's why we've submitted the
21 request to file a motion.

22 MR. HANTMAN: Your Honor, since it's undisputed that
23 Mr. Wexner's name did appear on building permits after the
24 time that it's alleged he had nothing to do with this, that
25 alone now becomes a question of fact. Okay?

1 THE COURT: I don't -- maybe it does. You still
2 don't have any allegations of jurisdiction, which is -- so if
3 I were to get a motion and the jurisdictional question was
4 resolved against you, a lot of times I don't even go on to the
5 rest of it because if I don't have jurisdiction, that's the
6 ends of the inquiry.

7 And I take it -- I viewed all the letters back and
8 forth -- there has never been an interest in settling;
9 correct?

10 MR. LITTLE: Just the contrary, Your Honor. We've
11 always made it very clear, we're not paying any money on any
12 of these type of --

13 THE COURT: Right. Okay.

14 MR. HANTMAN: Your Honor, if I may.

15 The jurisdiction we believe is that the plaintiff
16 lives in New York.

17 THE COURT: Yes.

18 MR. HANTMAN: The building is in New York. Whatever
19 happened to her, happened in New York. Whoever owned the
20 building among these different entities which we think that
21 they were the owners, not Epstein at the time that this
22 happened and it was a fraudulent transfer, even if they are
23 out of state, they knew or should have known that by reason of
24 what they were doing, it would have an impact on someone or
25 persons in New York, so I think --

1 THE COURT: Well, that will be your answer then when
2 the motion is filed. I have to tell you, I don't think it's
3 very persuasive as I sit here, but you will cite the cases
4 that will permit me to draw that conclusion. So, -- but I'm
5 not going to set the motion schedule now, only because I think
6 the first order of business is to have that -- the motion to
7 disqualify counsel decide it.

8 And when are you going to file -- I'm not deciding
9 it. Judge Levy is. And so when are you going to file your
10 response to that?

11 MR. HANTMAN: Well, since it was filed, there was no
12 briefing schedule, it wasn't clear to us when the answer would
13 --

14 THE COURT: Okay. I'm just curious, did you pick a
15 date?

16 MR. HANTMAN: I think it would be two weeks.

17 THE COURT: Okay. So Judge Levy works fast, so once
18 he decides that, I think -- the other thing I'm going to
19 encourage you to do is take a look at your complaint again,
20 mindful of a couple of concerns -- I'm not sure why they have
21 to have all of these defendants in there, but, you know, you
22 know your case better than I do, and to look at some of these
23 claims that are in the complaint, whether the -- consider
24 whether the statute of limitations and the particular law that
25 extended the statute of limitations, whether that would apply

1 to a fraudulent conveyance claim. I don't know the answer to
2 that, but I think it's an interesting question.

3 And then look at this conspiracy -- sort of
4 free-floating conspiracy claim, I'm not sure that's a valid
5 claim, but it might be. But these are all things that you
6 should consider, and consider whether or not this is an action
7 you want to continue with.

8 So once Judge Levy makes a decision about the
9 disqualification of counsel, then we'll proceed from there,
10 depending on what the decision is.

11 If he denies the motion, I suspect what I will ask
12 you to do is file a status report updating me on any decisions
13 you've made about whether to continue with the action, whether
14 you are going to file an amended complaint, but we can deal
15 with those things as they come.

16 Give me just a second.

17 (Pause.)

18 THE COURT: All right. Anything else anybody wants
19 to put on the record?

20 MR. HANTMAN: No, but I guess what Mr. Little gave
21 you for -- to give you an overview, this is not filed right.
22 This is what --

23 THE COURT: I think it was just his talking points.
24 Do you want him to file it?

25 MR. HANTMAN: No, because this raises so much --

1 it's very ingenious. I mean, I appreciate this because it's
2 very thorough, but it goes way --

3 THE COURT: Take a look at it, maybe it will give
4 you some ideas. I don't know, I haven't read it all the way
5 through. But I think it was just a -- I don't know if you
6 want to file it as a supplement to your letter.

7 MR. LITTLE: I do not, Your Honor, unless the Court
8 is so inclined that we do so. I typically use those type of
9 materials to help frame the discussion with the Court.

10 MR. HANTMAN: I appreciate his diligence and we'll
11 try to narrow the issues, Your Honor.

12 THE COURT: Okay. All right. So as soon as I -- as
13 soon as Judge Levy makes a decision, then we'll proceed from
14 there.

15 All right. I do want to thank our court reporter.

16 All right, thanks everybody.

17 (Matter concluded.)

18

19 * * * * *

20
21 I certify that the foregoing is a correct transcript from the
record of proceedings in the above-entitled matter.

22
23 /s/ Denise Parisi

January 13, 2023

24 _____
25 DENISE PARISI

DATE